



SAN FRANCISCO DEPARTMENT OF
CITY PLANNING

MEMORANDUM re:
PROPOSED AMENDMENTS TO CHAPTER 31,
SAN FRANCISCO ADMINISTRATIVE CODE,
ENVIRONMENTAL QUALITY

December 9, 1976

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DEPARTMENT OF CITY PLANNING

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MEMORANDUM

December 9, 1976

TO: City Planning Commission

FROM: Rai Y. Okamoto, Director of Planning

RE: Proposed Amendments to Chapter 31, San Francisco Administrative Code, Environmental Quality

The staff of the Department of City Planning has prepared a draft ordinance, dated December 9, 1976, to amend Chapter 31 of the San Francisco Administrative Code which deals with the environmental review process. A table has also been prepared to show the derivation of the proposed amendments from State law. This memorandum outlines the reasons for these proposals, and describes the various amendments and their significance.

Reasons for these Amendments

Chapter 31 of the San Francisco Administrative Code, which is primarily procedural, must conform to the California Environmental Quality Act (CEQA) and to the Guidelines for Implementation of the Act adopted by the State Secretary for Resources.

On March 17, 1976, the Secretary for Resources announced proposed amendments to the State Guidelines, and hearings on those amendments were subsequently held by the Secretary. The Guidelines amendments were not made final, due to the emergence of proposals in the Legislature to amend CEQA. When the legislative amendments were eventually adopted in AB 2679, the Guidelines amendments were modified and made final on September 30, 1976. Further Guidelines amendments, reflecting the changes in CEQA not covered earlier, were proposed by the Secretary on November 12; hearings will be held on that proposal December 16 and 17, and the further Guidelines amendments may subsequently be modified and be made final.

Local agencies are required to comply with the amendments to CEQA and the adopted amendments to the State Guidelines by January 1, 1977. Under ideal circumstances, local ordinances such as Chapter 31 would be brought into conformity by enactment of amendments before that date. However, the State has provided too little time for the local legislative process to be completed before January. In any event, Chapter 31 has foreseen these circumstances and contains, in Section 31.01(b), the statement that "any amendments to CEQA or the State Guidelines that may be inconsistent with this Chapter shall govern until such time as this Chapter may be amended to remove such inconsistency".

Therefore, the local amendment of Chapter 31 does not have to be adopted by January 1, although it would be prudent to complete that process as soon as possible. In the interim, the practices newly prescribed by State law will be followed.

The Department of City Planning has reviewed the amendments to CEQA and the State Guidelines, and has consulted with the City Attorney. It appears that the great bulk of the State amendments reflect procedures already followed in San Francisco, many of which are contained in or implied by present provisions of Chapter 31. In some cases the State law has directly incorporated San Francisco procedures. For these reasons, many of the State amendments will require no changes in Chapter 31.

In the draft ordinance, the amendments mandated by changes in State law vary in importance from potentially significant changes to minor changes in wording. Certain changes not mandated are proposed in order to expedite and clarify the environmental review process. Finally, one requirement of State law -- time limits for preparation of Negative Declarations and EIR's -- has not yet been included in the ordinance, pending adoption of a final amendment to the State Guidelines on this subject.

Major Mandated Amendments

Three of the mandated changes in Chapter 31 may be considered of major significance:

Sec. 31.24(b) through (g); Sec. 31.25(e). Requires that Negative Declarations be prepared on a preliminary basis prior to issuance. After a period for comments and appeals, the Negative Declaration is to be made final subject to any necessary modifications.

Sec. 31.02(c). Establishes the policy that projects should not be approved as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects.

Sec. 31.29(c). In furtherance of the policy stated in Sec. 31.02(c), provides that where the action of the decision-making body or appellate body allows the occurrence of one or more significant environmental effects identified in the final EIR, such body shall state in writing reasons to support its action based on the final EIR or other information in the record. Specifies the types of findings that must be made in such an event. Related provisions are contained in Sec. 31.24(a) (Negative Declaration to describe mitigation measures included in the project) and Sec. 31.29(d) (Notice of Determination after an EIR to describe mitigation measures that were adopted).

Other Mandated Amendments

The other mandated changes in Chapter 31, of lesser significance, are the

following:

Sec. 31.01(a). Brings the references to CEQA and the State Guidelines up to date.

Sec. 31.11(c). Deletes from Chapter 31 the definition of "significant effect" which was based upon an earlier provision in the State Guidelines. The definitions in CEQA and the State Guidelines should be used directly; these are incorporated by reference in Chapter 31 through existing Sec. 31.04(b).

Sec. 31.22(b). Provides for issuance of Certificates of Exemption for exempt projects.

Sec. 31.23(b). Provides that an EIR shall be prepared when there is serious public controversy concerning the environmental effect of a project, but that controversy not related to an environmental issue shall not be cause for preparation of an EIR.

Sec. 31.23(e). Allows an Initial Evaluation prepared pursuant to the National Environmental Policy Act to be used to satisfy the requirements of CEQA.

Sec. 31.24(a). Requires that a Negative Declaration have attached to it a copy of the Initial Evaluation.

Sec. 31.24(c). Requires notice of a Negative Declaration to persons previously requesting such notice.

Sec. 31.24(g). Requires that the decision-making body or appellate body certify that it has reviewed and considered the information contained in the final Negative Declaration.

Sec. 31.24(h). Makes minor changes in the requirement for a Notice of Determination after action on a project for which a Negative Declaration has been issued.

Sec. 31.25(a). Requires that notice of a finding that an EIR is required be sent to persons previously requesting such notice.

Sec. 31.26(d). States that environmental effects shall be discussed in an EIR in proportion to their severity and probability of occurrence.

Sec. 31.29(d). Makes minor changes in the requirement for a Notice of Determination after action on a project for which an EIR has been prepared.

Proposed Amendments Not Mandated by State Law

Several additional amendments to Chapter 31 are recommended to improve local practice. These changes are consistent with CEQA and the State Guidelines but

are not mandated by them.

Sec. 31.22(a). Requires that for any project costing more than \$100,000 the determination of exclusion or categorical exemption from CEQA and the State Guidelines shall be made by the Department of City Planning. The change would affect City projects, for which many of these determinations have previously been made by operating departments.

Sec. 31.35. This is a new Section providing methods of evaluation for modified projects. CEQA and the State Guidelines require a reevaluation of a project in certain situations after the project has been found to be excluded or categorically exempt, or after a Negative Declaration has been issued or an EIR prepared and certified. Such a reevaluation is needed if there is a substantial change in the proposed project, in the circumstances under which the project is to be undertaken, or in relevant information available for use in evaluation of the project. Until now, Chapter 31 has not specified the manner in which the reevaluation is to be conducted.

Sec. 31.36. This is a second new Section, providing a procedure for amending an EIR previously certified, without the necessity of preparing a new and complete EIR, in cases in which it has been found under Sec. 31.25 that there could be a substantial change in the environmental effects of the project. If this amendment procedure is applicable, the normal steps of EIR preparation are gone through, but the preparation, review and certification are confined to the amendment needed, and the remainder of the previous EIR is not altered. After the EIR amendment has been certified, a new action is required to approve the project. In connection with this new Sec. 31.36, existing Sec. 31.46 would be changed to add a fee for preparation of an amendment to an EIR; this fee would be one-third the fee that would be required for a full EIR on the same project.

The Pending Amendment to Establish Time Limits

The amendments to CEQA contain a requirement that local regulations include time limits, not to exceed one year, for completing Negative Declarations and EIR's for private projects for which a lease, permit, license, certificate or other entitlement for use is issued by a public agency. The time limits are to be measured from the date on which an application requesting approval of the project is received by the local agency.

This CEQA requirement raises a number of questions as to what constitutes an application for approval, what happens if the project sponsor does not provide information needed for the evaluation, and what consequences flow from a failure to meet the time limits, among others. It might be expected that the State Guidelines would provide clarification. However, in the Guidelines amendments proposed on November 12, the Secretary for Resources has not clarified the provision but rather has made it far more complicated. The Secretary's proposal adds time limits for an Initial Study, for revising a preliminary draft of an EIR, and for responses to comments under various stated circumstances, and calls for longer or shorter time limits depending upon the complexity of the project.

Because the Secretary's proposal is not final, and because clarification is still needed in the State Guidelines, no change is now proposed for Chapter 31 with respect to time limits.

Over-all Effect of these Amendments

The express purpose of the sponsors of the amendments to CEQA and the State Guidelines was to make the environmental review process more efficient and to simplify the steps where possible. On balance, local agencies will do well to stay even, in terms of the complexity of their processes and the time and staffing needed.

On the one hand, the amendments make explicit certain facts that should all along have been implicit in the process: for example, that environmental effects should be discussed in proportion to their importance, that public controversy is relevant to environmental review only when it is related to environmental issues, that unnecessary duplication should be avoided, and that widespread public notice should be given. If amendments such as these will help the public to understand the process, or help public agencies in carrying out the intent of the law, then the amendments will serve their purpose.

The proposed amendments to Chapter 31 that are not mandated by State law may also help to simplify or explain the process. Having determinations of exclusion and categorical exemption made by the Department of City Planning for large public projects may make those determinations more available to the public and may avoid misunderstandings and litigation. Having definite procedures for evaluation of modified projects, and for amendment of EIR's previously certified, will at times allow simplified steps to be taken when another full review of the project would have been wasteful.

On the other hand, the major mandated amendments are likely to require additional time and effort. Preparation of Negative Declarations on a preliminary basis prior to issuance adds a step, although a useful one. The policy relating to alternatives and mitigation measures, and the various statements and findings that flow from that policy, will undoubtedly require additional evaluation of some projects by the Department of City Planning and by other boards, commissions and departments and private parties.

Finally, the time limits for completion of Negative Declarations and EIR's, in whatever form they may finally go into effect, will add another complex dimension to review of projects and will do little, if anything, to make the process work more effectively. With regard to this type of problem, it is likely that internal efficiency in public agencies, and cooperation between project sponsors and the reviewing agencies, can do more to improve the process than will legislated mandates.

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